IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.776 OF 1984

Jhamandas Ramchand Hassija)
(Since deceased through his L.R.))
Smt. Sita Chamandas Hassija)
(Since deceased through her L.R.))
Prakash Jhamandas Hassija)
Indian Inhabitant, residing at)
Glamour Building, 1st Floor,)
Arthur Bunder Road, Colaba) .....Appellant.

V/s

1. Kanayalal Ramchand Hassija)
(Since deceased through L.Rs))
1-A) Rajoo Hassija Wd/o)
Kanayalal Hassija, aged)
67 years.)
)
1-B) Mahesh Hassija S/o)
Kanayalal Hassija, aged)
40 years.)
Both Indian Inhabitants of)
Bombay residing at C-11)
Sangram Bhuvan, Colaba,)

Bombay - 400 005.)
)
2. Mrs. Asha S. Punjabi,)
Indian Inhabitant, residing)
402, Atul Terrace, Cuffe)
Parade, Bombay - 400 005.)
)
3. Mr. Suresh J. Hassija,)
residing at North Ridge,)
18407, Charitoh Lane,)
California, California CA)
91326, U.S.A.) ....Respondents.

Ms. R.C. Nichani for the appellant.

Mr. P.K. Dhakephalkar, Senior Advocate with Ms. Geeta Shastri i/b

M/s. Khilnani & Co. for Respondent No.1B

Mr. D.V. Deokar, Ist Assistant to Court Receiver, present.

CORAM: V.M. KANADE, J.
DATE : 9th October, 2007

ORAL JUDGMENT:

1. Appellant is challenging the judgment and order passed by the City Civil Court, Bombay in Suit No. 5265 of 1988 whereby the Trial Court was pleased to pass a preliminary

decree of dissolution of suit partnership firm in terms of prayer clause (a) and directed that the partnership to stand dissolved with effect from 16th September, 1980 and proportionate shares of the parties in the partnership were also fixed as 40 per cent belonging to Plaintiff and 40 per cent and 20 per cent belonging to Defendant Nos. 1 and 2 respectively. The Trial Court further ordered that the tenancy rights as also telephone were held to be part of the assets of the partnership firm.

2. The learned Counsel appearing on behalf of the appellant submitted that the appellant was aggrieved by the Shop No.12 including two bankdas and the telephone being declared as part of the assets of the partnership firm. She further submitted that the original defendant had died and the heirs of the defendant had continued to be in possession of the said business in Shop No.12 and that they had created third party rights.

3. Plaintiff's case, in brief, is that the parties migrated to India from Pakistan and that the Plaintiff was the elder

brother of Defendant No.1 and that both started their business as hoteliers and were also in the business of selling cloth. Plaintiff's case in the plaint was that the Defendant No.1, being his younger brother, remained under his guidance and control. It is his case that he acquired the premises in Mohatta Market. Though, tenancy rights were acquired in the name of Defendant No.1, funds were deployed by the Plaintiff and Defendant No.1. Similarly, tenancy rights were also acquired by the Plaintiff and Defendant No.1 in Vincent Hotel. In the year 1969, there was a dispute between the parties and Defendant No.1 filed a suit in the City Civil Court being Suit No.3428 of 1969. This dispute was settled between the parties on account of intervention of one Shri Harumal Nhilammal whereby it was agreed that the tenancy rights of the business premises would be in the name of both, Plaintiff and Defendant No.1 in the ratio of 40 per cent and 60 per cent respectively and tenancy rights in Vincent Hotel were given to Defendant No.1, which was disposed of by him for an amount of Rs. 1 lac. During the pendency of the suit, Court Receiver was appointed and the Plaintiff was appointed as an agent of the

Court Receiver.

4. The learned Counsel appearing on behalf of the appellant - plaintiff submitted that the Trial Court erred in holding that the tenancy rights and telephone are assets of the firm even though they were not acquired by the firm. She further submitted that the Trial Court had failed to appreciate that, in law, the appellant could not transfer and or assign tenancy rights and that the telephone had been allotted only to the appellant. She further submitted that the Trial Court erred in holding that merely because the rent during the subsistency of tenancy period was paid out of the firm's account, the tenancy rights are assets of the firm. She invited my attention to the provisions of section 15 of the Bombay Rent Act which expressly prohibited assignment of the tenancy rights of the suit shop to the partnership firm. The learned Counsel for the appellant has taken me through the judgment and order of the Trial Court as also the evidence of both the parties.

5. The submissions made by the learned Counsel

appearing on behalf of the appellant cannot be accepted. It is admitted that when the said suit being suit No.3428 of 1969 was filed in the City Civil Court, the said civil suit was settled and pursuant to the said settlement, an award was passed by Shri Harumal Nhilammal who was appointed as a sole arbitrator in which it was agreed that the shop of Ranchand Sons including all bankdas, the business carried out in the said Shop and the tenancy rights, good-will, stock-in-trade and telephone will belong to brothers in the following shares:- (a) 60% - Shri Jhamandas Ranchand Hassija and (b) 40% - Shri Kanayalal Ramchand Hassija. It was further stated in the award that the parties may have a partnership deed made between them on the above basis. Accordingly, consent terms were filed in the City Civil Court in Suit No.3428 of 1969 in which the said agreement was incorporated and it was agreed that the parties would reconstitute the firm and have a regular deed of partnership between them as per terms agreed by them as per the award of Harumal. Pursuant to the said consent terms, deed of partnership was executed between the parties wherein it was clearly agreed that the cloth business

in the name and style of Messrs Ramchand Sons on the Otla including other adjacent Otlas would be amalgamated and one business would be started wherein the Plaintiff would have 60% share and Defendant would have 40% share. It was further clearly stated that the said Otla adjacent to Shop No.12 would be an asset of the partnership firm. Similarly, telephone also would be an assent of the partnership firm. All these documents have been brought on record. The Trial Court has passed a preliminary decree relying on these documents and after appreciating the evidence on record. The appellant herein, in his cross-examination, has admitted all these documents. That being the position, the submission made by the learned Counsel appearing on behalf of the appellant that the suit premises and the telephone is not the asset of the partnership firm cannot be accepted. The submission of the learned Counsel for the appellant that there cannot be any assignment of tenancy as it is contrary to section 15 of the Bombay Rent Act also cannot be accepted. Bombay Rent Act has been repealed and there is no such prohibition in the Maharashtra Rent Control Act, 1999. Thus, there is no merit in the submissions

made by the learned Counsel appearing on behalf of the appellant.

6. Appeal is accordingly dismissed. Order passed by the City Civil Court is confirmed. The order of appointment of Court Receiver to continue till the final Decree is passed.

(V.M. KANADE, J.)